

### **Remarks**

Claim 7 has been canceled, leaving claims 1-6 and 8-23 pending and at issue in the present application.

Applicant respectfully traverses the rejection of claims 1-6 and 8-23 as either anticipated by or obvious over Miller et al.

Claim 1, and claims 2, 3, and 21 dependent directly or indirectly thereon, recite an evaporative device that includes a container for holding a liquid, wherein the container has an opening. The device also includes a porous wick that extends through the opening such that a portion of the wick contacts the liquid held within the container. A portion of the wick is exposed to the ambient environment, and the wick transfers the liquid from the container. The evaporative device further includes a capillary member that has a surface in communication with a portion of the wick. The capillary member has a nonporous capillary channel that extends radially from the wick.

Claim 4, and claims 5, 6, 8-11, 13, 14, and 16-20 dependent directly or indirectly thereon, specify an evaporative device that includes a container for holding a liquid, wherein the container has an opening. The device further includes a porous wick that extends through the opening such that a portion of the wick contacts the liquid held within the container. A portion of the wick extends outside of the container such that the wick transfers the liquid from the container. Still further, the device includes a capillary plate that has a surface in communication with a portion of the wick. The surface has nonporous capillary channels that extend radially from the wick along the surface of the capillary plate. The capillary channels are substantially continuous along lengths thereof.

Claim 12 recites an evaporative device that includes a container for holding a liquid, wherein the container has an opening. The device also includes a porous wick that extends through the opening such that a portion of the wick contacts the liquid held within the container. A portion of the wick extends outside of the container such that the wick transfers the liquid from the container. A cover encases a portion of the portion of the wick extending

outside of the container. The device further includes a capillary plate that has a surface in communication with a portion of the wick. The surface has one or more capillary pathways along which liquid, transferred by the wick from the container, is drawn by capillary action for dispersion to the ambient environment. The capillary pathways are substantially continuous along lengths thereof.

Claim 15 recites an evaporative device that includes a container for holding a liquid, wherein the container has an opening. The device also includes a porous wick that extends through the opening such that a portion of the wick contacts the liquid held within the container. A portion of the wick extends outside of the container such that the wick transfers the liquid from the container. The device further includes a capillary plate that has a surface in communication with a portion of the wick. The surface has one or more capillary pathways along which liquid, transferred by the wick from the container, is drawn by capillary action for dispersion to the ambient environment. The capillary pathways are substantially continuous along lengths thereof. The device has plural capillary plates, each having one or more capillary pathways, and the capillary pathways are in communication with the portion of the wick extending outside of the container. The plural capillary plates are movable such that the capillary pathways of each are removable from communication with the portion of the wick extending outside of the container. The plural capillary plates are actuatable in a direction away from the wick to separate the capillary pathways thereof from communication with the portion of the wick exposed to the ambient air.

Claim 22 recites an evaporative device that includes a container for holding a liquid, wherein the container has an opening. The device includes a porous wick that extends through the opening such that a portion of the wick contacts the liquid held within the container. A portion of the wick is exposed to the ambient environment, where the wick transfers the liquid from the container. The device further includes a nonporous capillary member having a surface in communication with a portion of the wick. One or more capillary pathways are disposed along the surface of the capillary member along which liquid, transferred by the wick from the container, is drawn by capillary action for dispersion to the ambient air. The capillary member is a capillary insert with at least one capillary channel formed thereon. A portion of the at least one capillary channel is in communication

with a portion of the wick such that the capillary channel transfers liquid from the wick for dispersion to the ambient environment. The wick includes an aperture formed in a portion of the wick in an axial direction. The capillary insert is disposed within the aperture such that the at least one capillary channel is in contact with an inner surface of the wick to transfer liquid from the wick to the capillary channel for dispersion to the ambient environment.

Claim 23 recites an evaporative device that includes a container for holding a liquid, wherein the container has an opening. The device also includes a porous wick that extends through the opening such that a portion of the wick contacts the liquid held within the container. A portion of the wick is exposed to the ambient environment, where the wick transfers the liquid from the container. The device further includes a nonporous capillary member that has a surface in communication with a portion of the wick. One or more capillary pathways are disposed along the surface of the capillary member along which liquid, transferred by the wick from the container, is drawn by capillary action for dispersion to the ambient air. The capillary member is a capillary insert with at least one capillary channel formed thereon. A portion of the at least one capillary channel is in communication with a portion of the wick such that the capillary channel transfers liquid from the wick for dispersion to the ambient environment. The wick includes an aperture formed in a portion of the wick in an axial direction. The capillary insert is disposed within the aperture such that the at least one capillary channel is in contact with an inner surface of the wick to transfer liquid from the wick to the capillary channel for dispersion to the ambient environment. The capillary insert is slidable within the wick.

Miller et al. does not disclose expressly or inherently an evaporative device including a porous wick, as recited by each of claims 1-6 and 8-23. In contrast, Miller et al. discloses an air freshener dispenser device that has a first sheer wall container and a second sheer wall container that contains the air freshener medium sealed therein via an impermeable membrane. The second sheer wall container is inverted and internally nested in the first container. The dispenser device is in an operational mode when the second container is in an internally nested position so that the capillary spacing between the container sidewalls provides a wicking means (but not a porous wick) for transport of the liquid air freshener medium released upon breaching of the membrane. MPEP § 2131 states "[a] claim is

anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

At least for the aforementioned reasons, the claims of present application are not anticipated by Miller et al. Moreover, the present claims are not obvious thereover because Miller et al. teaches away from using a porous wick. Miller states that "[a] typical wicking device utilizes a combination of a wick and emanating region to dispense a volatile liquid from a liquid reservoir." Column 1, lines 36-38. Further, Miller et al. states "[o]f special interest with respect to the present invention are wicking dispenser devices in which the wicking action is promoted by a nonporous wick structure." Column 1, lines 42-44. Miller et al. states that an object of the Miller et al. alleged invention is "...to provide an air freshener dispenser device in which a liquid air freshener is transported from an enclosed reservoir to a vapor-emanating surface by capillary action with a non-porous wicking structure." Columns 1 and 2, lines 66-67 and 1-2. Therefore, not only does Miller et al. not expressly or inherently disclose an evaporative device including a porous wick, but Miller et al. expressly teaches away from using a porous wick in such device. The prior art must disclose at least a suggestion of an incentive for the claimed combination of elements in order for a *prima facie* case of obviousness to be established. See *In re Sernaker*, 217 U.S.P.Q. 1 (Fed. Cir. 1983) and *Ex Parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985).

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For the foregoing reasons, reconsideration and withdrawal of the rejection of the claims at issue and allowance thereof are respectfully requested.

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